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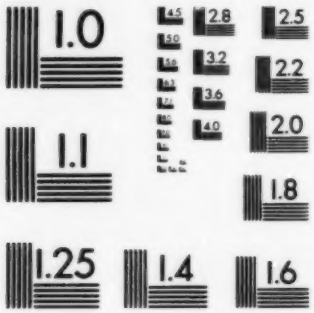

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AMO REPORTS 84-4

THE ONTARIO ENVIRONMENTAL ASSESSMENT ACT AND ITS COST IMPACT ON MUNICIPALITIES

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
MAY 1984

86-02226/

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario

To the Municipal Clerk:

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"AMO Reports 84-4" was initiated by the Large Urban Section of AMO, prepared by a Special Committee of the Municipal Engineers Association, and endorsed by the AMO Board of Directors. It was submitted to the Honourable Claude Bennett, Minister of Municipal Affairs and Housing, and the Honourable Andrew S. Brandt, Minister of the Environment, on June 11, 1984.

EXECUTIVE SUMMARY

The Association of Municipalities of Ontario reaffirms its support for the application of an environmental assessment process to those municipal undertakings which could adversely affect the environment. AMO accords its support on the basis that the procedures under an environmental assessment process would not lead to the creation of excessive delays in the implementation of municipal projects, nor an undue increase in administrative and/or construction costs, which would be borne by the municipal taxpayer.

Municipal politicians and staff are becoming increasingly alarmed at the high costs associated with any project that is subject to the Environmental Assessment Act. Most of the municipal projects to date that have followed the individual assessment process have proceeded to hearings. As identified in this report, most of the extremely high costs associated with environmental assessment arise out of preparing for and attending such hearings. Proceeding on the basis of the individual assessment process can be expensive. Some of the direct costs have been identified in the report. Some of the indirect costs, however, can be more expensive than the direct costs of following the Act.

One of the main indirect costs associated with the Act is the time delay in getting decisions from the Ministry of the Environment. Whether the decisions are for reviews, exemptions, "bump-up" requests or hearing requests, it seems to take an inordinate amount of time to obtain a final official Ministry position on the matter.

Based on the findings presented in this report, it would appear that increased costs are inevitable when following the Environmental Assessment Act for municipal projects. The following table indicates typical costs associated with the preparation of individual assessments:

Typical Costs Associated with Individual Assessments

Project Cost	EA Process Cost	
	(a) as % of Project Cost (See Figure 1)	(b) in $'s (See Figure 2)
under $1 m	in range 7% to 3%	$30,000 to $70,000
under $5 m	in range 5% to 2%	up to $250,000
under $20 m	in range 2% to 1%	up to $400,000
over $20 m	up to 1.0%	up to $425,000

When the Ministry of the Environment staff introduced the Environmental Assessment Act to municipal staff they quoted costs of between 1/2% and 1% of the project cost for the environmental assessment process. The costs indicated above are considerably more than 1/2%, especially at the lower end of the project cost scale where the majority of municipal projects will occur. The magnitude of these costs could be reduced, and the Act gain greater acceptance if the process was streamlined, especially the review and approval time periods. AMO has documented the difficulties with the implementation of the Environmental Assessment Act, and provided solutions to overcome these difficulties. It is evident that complying with the Act has increased project costs and the time taken to obtain all the necessary approvals. The summary of recommendations contains proposals which, if implemented, would reduce costs, streamline the process and still provide adequate protection for the environment. The general public, municipalities and the Ministry of the Environment would all benefit from the proposed changes to the regulations and these, in turn, would enhance the Environmental Assessment Act of Ontario.

Obviously these changes will not occur overnight. One of the difficulties the Province must overcome is the tendency for a host of special interest groups to view any changes to the Act or the regulations as an attempt to reduce the scope and effectiveness of the legislation. The recommendations in this report are proposed to ensure that the Act, to be effective, is confined to only those undertakings which have a potentially significant impact on the environment.

The Federal Government has an Environmental Assessment and Review Process (EARP) which was established in 1973. An "initiator", (a federal department), screens the undertaking for potentially adverse environmental impacts. If the initiator determines that there are no significant effects, the project may proceed. Thus, in simplified terms, all projects are screened and exempted unless it is determined that there are significant effects.

The Environmental Assessment Act Chapter 140, R.S.O. 1980, was established in 1975 and in simplified terms all projects are subject to the Act unless specifically exempted. This results in a large number of exemptions that are publicly announced. The public perception, readily reinforced by the media in concert with special interest groups, is that every exemption granted is automatically wrong and is leading piecemeal to the disintegration of the legislation. The public must be reminded that the Environmental Assessment Act was introduced to deal only with those issues which would have a "potentially significant impact" on the environment.

In summary, the Association believes that streamlining the environmental assessment process will concentrate the effort and costs on projects that have the potential to significantly impact the environment. The eleven recommendations presented by AMO, if implemented, would provide the necessary streamlining of the process.

In the Speech from the Throne on March 20, 1984, the provincial government announced that "experimental mediation procedures will be initiated" at the Environmental Assessment Board as part of an overall review of environmental laws. Premier Davis later said the government is not seeking to alter the objective of the board hearings, but is trying to move away from the "bureaucratic approach" that makes the process slow and unwieldy (Toronto Star, March 21, 1984). The Association would support such action.

THE ONTARIO ENVIRONMENTAL ASSESSMENT ACT AND ITS COST IMPACT ON MUNICIPALITIES

1. INTRODUCTION

In 1983, the Large Urban Section of the Association of Municipalities of Ontario (AMO) passed a resolution regarding the high costs associated with environmental legislation and regulation in Ontario.

As a result of this resolution AMO asked the Municipal Engineers Association (MEA) if it would provide technical assistance and give practical advice on the costs involved and the time taken in following the environmental assessment process. As a result of this request, the MEA set up a working group which, along with AMO staff, established an Ad Hoc Committee to address municipal concerns regarding the Environmental Assessment Act. The Committee discussions culminated in the preparation of the following report.

This report addresses the problems experienced by municipalities in following the Environmental Assessment Act, the costs associated with construction delays, preparing documents, hiring consultants and attending hearings, along with identification of the benefits of the Environmental Assessment Act. The report presents proposals for improving and streamlining the environmental assessment process and suggests changes to the administration of the Environmental Assessment Act and to the procedures of the Environmental Assessment Board.

2. HISTORY

The Environmental Assessment Act was passed in 1975 and, initially, only the Provincial Ministries, their agencies and Crown Corporations were subject to the Act.

In 1980 Regulation 293 of the Revised Regulations of Ontario was published. This regulation, and recent amendments, set out the nature of the application of the Environmental Assessment Act to municipalities. In general, a municipal undertaking is not subject to the Act if it costs less than $2 million, indexed to 1977. There are, however, specific exceptions to this. These are listed in the regulation.

the regulation also provides temporary exemption for certain municipal projects, similar to those contained in the Ministry of Transportation and Communications' class assessments for road and bridge projects and the Ministry of the Environment's class assessment for sewer and water projects.

Projects by the private sector are exempt, unless designated by the Minister of the Environment as requiring an environmental assessment. Private sector works include such activities as new subdivisions, private parks and theme parks, new offices, and industrial, commercial or residential buildings.

The Environmental Assessment Act, R.S.O. 1980, Chapter 140, is an all-encompassing statute concerned with air, land, water, plant and animal life, and all human activities associated with these. There are a number of approaches used to determine which municipal activities will be exempt from the provisions of the Environmental Assessment Act. Two different types of environmental assessments are currently in use:

1. An individual environmental assessment, which deals with a single undertaking or project or related combination of undertakings or projects.

2. A Class Environmental Assessment, which is a single environmental assessment submission on a group of projects that will be implemented in the future. It comprises the planning and design as well as the monitoring and construction process. The Class Assessment submission also provides an outline of projects proposed for approval under the Class Environmental Assessment which would not be required to follow the Class Environmental Assessment planning process.

The Ministry of the Environment staff feel that the main difference between the individual assessment and the class assessment is the review process associated with the documentation produced. Under an individual assessment the municipality is required to prepare an individual assessment document on each specific project and submit this document to the Minister of the Environment, who in turn distributes it to numerous review agencies for comment and approval. With a class assessment, once the class environmental assessment process is approved, the municipality would prepare an environmental study report (ESR) that documents the process of planning and designing the particular project. This report would be prepared in accordance with the accepted and approved class environmental assessment. This environmental study report is only submitted to the Ministry of the Environment for information. It is, however, put on

public record for review and comment. The agencies and the public can object to the environmental study report.

Two class environmental assessments, one for municipal roads and one for sewage and water projects, were prepared by the Municipal Engineers Association and submitted to the Minister of the Environment in 1982, as individual environmental assessments for review and approval. The Municipal Engineers Association could not act as proponent for these assessments, therefore, each was endorsed by six municipalities and submitted to the Ministry for approval. These two class assessments were designed to be general documents that would give approval now to carry out specific projects in the future, provided the process is followed. They were designed to be applicable to all of the municipalities in Ontario. The Minister of the Environment will decide whether or not to accept the class environmental assessment documents and approve the undertakings, after consideration of public submissions received and after any hearing (if one is held) before the Environmental Assessment Board.

3. EXPERIENCE WITH THE ACT

3.1 From 1975 to 1983

The Provincial Ministries, their agencies and certain other groups, such as Ontario Hydro, have had several years experience working with the Act. Most of them have set up departments, within their organizations, to deal with the environmental assessment process. Notwithstanding these special groups, they have still required additional special studies to be undertaken, which has necessitated hiring consultants. Therefore, many consultants have gained experience in preparing environmental assessment documents through the Provincial Ministries' and Ontario Hydro projects.

Municipal experience with the Environmental Assessment Act is limited. Based on the cumulative index contained in the "Environmental Assessment Update" booklet, last printed in December 1982, only four municipalities had submitted individual assessments to the end of 1982:

Index No.	Muncipality
78	Scarborough - Stormwater management, Tapscott
86	Thunder Bay - Municipal Auditorium
87	London - Victoria Hospital Energy from Waste Plant
88	Williamsburg - Sewage Treatment System

The following status of municipal environmental assessments was supplied by the Ministry of the Environment staff in a letter dated February 10, 1984.

Approved EAs

- Thunder Bay Municipal Auditorium
- Tapscott Storm water management - Scarborough
- Smooth Rock Falls Sanitary Landfill Site
- Ingram Transfer Station - Metro Toronto
- Victoria Hospital Energy from Waste Plant - London

Under Review

- Red Hill Creek Expressway - Hamilton-Wentworth
- Williamsburg Sewage Treatment Plant
- Muskoka Sludge Transfer Station
- Toronto Energy from Waste Plant
- Municipal Roads Class EA
- Municipal Sewage and Water Class EA

Dormant Projects

- Northumberland County Waste Management Site

Projects in Pre-submission Consultation
(Not Submitted)

- Derry Road Extension
- Palmerston Sewage Treatment Works
- Halton Region Waste Management Site

- BF Goodrich Energy from Waste Plant (Waterloo)
- Adelaide Township Landfill Site
- Sault Ste. Marie Landfill Site
- Adjala Township Landfill Site
- Onaping Falls Landfill Site
- Area Region Transportation System
- North Lake Simcoe Landfill Site
- Seaforth and Area Solid Waste Site
- Region of Peel Landfill
- Region of Peel Area Waste Management Study
- St. Vincent - Meaford Landfill Site
- Durham Region Waste Management Plan
- Harbour Front LRT (TTC) - Toronto
- Niagara Waste Management Master Plan
- Municipal Transit Class EA
- Osnabruck Township Landfill Site
- Hallowel Township Landfill Site
- Grimsby Landfill Site
- Waterloo Region Area Waste Master Plan

The municipal projects listed above, are individual assessments under the Environmental Assessment Act that have been submitted to the Minister of the Environment for review.

The various ministries, agencies and authorities, that have been regulated by the Act since 1975, have produced their own class assessment documents. The Ministry of Transportation and Communications has seven approved class environmental assessments (B1 to B7), which have been approved for use on their various categories of work. Currently, they are working on revisions to them based on several years of experience. Ontario Hydro has produced class environmental assessments for their minor transformer stations and transmission lines. The Toronto and Area Transit Operating Authorities (TATOA) has four approved class environmental assessments (B1 to B4). The Ministry of the Environment, the Ministry of Natural Resources and the Asscciation of Conservation Authorities of Ontario have also prepared class environmental assessments.

The two municipal class environmental assessments, that were submitted by the Municipal Engineers Association in 1982, have been reviewed by the Ministry of the Environment staff and other review agencies. The review documents were made public on February 1, 1984.

Since December 1982, the Ministry of the Environment has not issued any information packages or documents to the local and regional municipalities. The periodical "Environmental Assessment Update" was a useful reference document that kept municipal staff advised of changes, new regulations and recent submissions.

Recommendation 1

1. **In order to keep the municipalities informed of new regulations, general information, proposed seminars and a listing of environmental assessments that have been submitted, an information document, such as "Environmental Assessment Update", should be issued quarterly by the Ministry of the Environment. Proponents should be encouraged to submit articles and letters, regarding the Environmental Assessment Act, for publication.**

3.2 The Environmental Assessment Board

The Environmental Assessment Board may hold hearings under the Environmental Assessment Act, the Environmental Protection Act (EPA) or the Ontario Water Resources Act (OWRA). Many municipalities have experience with hearings before the Environmental Assessment Board, under the Environmental Protection Act concerning landfill sites, waste disposal sites and waste treatment plants. These hearings have been used as a reference source when discussing hearings in this report.

Section 34 of the Environmental Assessment Act eliminates the possibility of duplicate hearings that may be required under it, the Environmental Protection Act and the Ontario Water Resources Act.

3.3 The Consolidated Hearings Act, 1981

Projects that are proceeding under the Environmental Assessment Act may be subject to hearings under other statutes, such as the Expropriations Act, the Ontario Municipal Board Act and the Planning Act, 1983.

To avoid multiple hearings, the proponent may give notice under the Consolidated Hearings Act, 1981. This would result in all hearings, and the decisions which are made as a result of those hearings, being conducted by a joint board under the Consolidated Hearings Act, 1981.

4. PROBLEMS IDENTIFIED WITH THE ENVIRONMENTAL ASSESSMENT PROCESS

4.1 The Class Assessment

Within the Municipal Class Environmental Assessment document, there are Schedules which list activities that are to be:

1) "A", totally exempt from the requirements of the Act
2) "B", exempt subject to a screening process
3) "C", subject to the class assessment process
4) "D", subject to an individual assessment (road projects only)

Routine maintenance activities and small construction projects will fall into the "A" or "B" categories.

A significant number of projects in a municipal capital works programme will be considered as class projects. The implementation of these projects will likely be affected by time delays resulting from the public participation component of the environmental assessment process. Section 6(1) of the Environmental Assesment Act states that environmental assessment approval is required before other approvals, such as those required from the Ontario Municipal Board, and MTC subsidy and Planning Act approvals, are granted. This will mean that, if a municipal council approves its capital works programme in January of any year, it must comply with the requirements of the environmental assessment process before it can receive OMB approval for the projects. Unless the municipality starts its environmental assessment process at least one year ahead of the proposed year of construction, it is unlikely that any project will be started in the year it is approved for funding by Council.

The preparation of the environmental study report will be coincident with the planning and preliminary design process and on a typical class project will take about three months. The public advertising, public review period, land acquisition and the establishment of project monitoring procedures will take at least another three months or longer, depending on the complexity of the project.

The City of Scarborough followed the draft Municipal Engineers Association Class Assessment for road projects on the proposed Brimley Road/Highway 401 partial interchange. Given the controversial nature of the project and allowing for the necessary public

participation, it took one year for a consultant to produce the environmental study report and the preliminary design report. The cost of the environmental assessment process (excluding preliminary design) was approximately 1 1/2% of the estimated construction costs for the project.

Of the class projects to be undertaken by municipalities, it is expected that the environmental assessment process will cost between 30% and 50% of the preliminary design costs or 5% to 7% of the construction costs, based on the experience of other agencies. As the value of the total project increases, the percentage cost of the environmental assessment process should decrease. It is felt that only when the construction costs exceed $5 million, is an estimate of 1% of these costs for the cost of an environmental assessment process reasonable.

The class process, as submitted, is a "disapproval" process where the proponent may proceed with the project unless "bumped up" to an individual assessment. There is the requirement, however, for the proponent municipality to provide for public participation at three stages in the process. Unfortunately a minority opinion can sometimes unduly influence the process.

The Association suggests that, in some cases, the public participation process may be continued too long. If a vocal minority are not satisfied with the environmental study report, they can request a "bump-up" to an individual environmental assessment. While AMO and the Municipal Engineers Association support public participation, delays due to frivolous objections should be avoided. The "bump-up" mechanism provided in the Environmental Assessment Act must be used responsibly and not solely as a delaying tactic by opponents of a project. Unnecessary delays cause increased costs as detailed in Section 5.

Recommendation 2

2. **When the Minister of the Environment considers requests for "bump-ups" from any objectors, the Minister should ensure that frivolous objections are not permitted. Any request for a "bump-up" should be accompanied by documentation outlining the reasons for the bump-up request. The Regional Office of the Ministry of the Environment should be asked to comment on the validity of the "bump-up" request taking into account the local concerns and issues.**

The Minister should have authority similar to that granted the Ontario Municipal Board under Section 63(5) of the Ontario Municipal Board Act, Chapter 317, R.S.O. 1980, permitting the Minister to deem that the objections to an undertaking were not sufficient to require a hearing, after having carefully considered all objections received.

If the project proceeds to a hearing, then issues which are not raised in the review process should not be raised during the hearings without advance notice to the proponent and the subsequent concurrence of the hearing body. Where the proponent considers it advisable the Regional office staff of the Ministry should be requested to assist the hearing by taking an active role.

It is anticipated that approximately 1,700 class environmental study reports will be prepared in the first three years after the class environmental assessment regulations are implemented. This information was obtained from the Ministry of the Environment and is based on responses to a questionnaire that the Ministry distributed to all municipalities in Ontario.

4.2 The Individual Assessment Process

Any project or activity of a municipality that falls outside of the Class Schedules A, B and C is subject to an individual environmental assessment.

A few large municipal projects have already been submitted as individual environmental assessments, as listed earlier. It is anticipated that 150 projects will be subject to the individual assessment process in the next three years, again based on the results of the Ministry's questionnaire.

The costs associated with the individual assessment process are detailed in Section 5 under the heading, Costs Associated with the Environmental Assessment Process.

Based on experience with individual environmental assessments to date, there are several areas of concern that should be addressed.

4.2.1 Preparation of the Environmental Assessment Documentation

The preparation of an individual environmental assessment document throughout the planning and public participation process can take many months and cost a considerable amount of money. The range of 6 months to 2 years for the planning and preliminary design process has been experienced. In the case of the City of Port Colborne water purification plant, the environmental assessment process extended from June 1977 to July 1979. When the final document was produced at a public meeting, there was no concern shown. It appeared that the main input to the process was from the staff of the various ministries. The Association believes that there should be a mechanism for cutting short the environmental assessment process, if there is no concern in the project shown at the initial public meeting and after all the necessary agencies have commented.

Recommendation 3

3. **If it is determined that there is little or no concern with a proposed project after the first public meeting, a mechanism should be available to cut short the process. Ideally, the municipal council should be able to pass a by-law indicating that they would be dispensing with the requirements of an individual assessment and producing an environmental impact statement that would be sent to the Minister of the Environment in support of the by-law. This would be a similar process to claiming exemption for a project.**

The planning of a new waste disposal site for the Regional Municipality of Halton commenced in 1974 and culminated with zoning and official plan approval in 1980. Subsequent to a hearing under the Environmental Protection Act, the project was designated subject to the Environmental Assessment Act, although planning for the site had been commenced in 1974. The environmental assessment process was started in 1982 and will not be complete until the end of 1984.

The Environmental Assessment of Water Control Structures (West Montrose Dam and Reservoir) in the Grand River Basin took four and one half years to complete. The document was submitted to the Minister in October, 1979.

4.2.2. Ministry Review of the Individual Environmental Assessment Documents

In the past it has taken up to two years for the Ministry of the Environment staff and the various review agencies to complete their review of an individual environmental assessment document. It is hoped that this excessive time for review can be substantially reduced.

The following table is an indication of the time taken on some municipal projects that did not proceed to a hearing:

Project	Date Submitted	Date Review Issued	Date Approval Received
Scarborough, S.W.M.	May, 1981	April, 1982	Oct. 1982
Metro Toronto Ingram Transfer Station	July, 1982	Sept., 1983	Jan. 1984
Municipal Roads Class EA	Jan., 1982	Feb., 1984	N.A.
Municipal Sewage and Water Class EA	Aug., 1982	Feb., 1984	N.A.

The time delay for review can represent a considerable cost factor or health hazard when the following facts are taken into account:

- inflated construction costs due to delays in tendering
- inflated costs of land that will have to be purchased
- depreciated land values for landowners that are affected
- mental anguish to homeowners that are affected and cannot sell
- health hazards that may be continued until project is constructed
- lost opportunties as project is not available on time and when needed

Ideally there should be a time limit placed on the Ministry of the Environment review period.

Recommendation 4

4. **The Minister of the Environment should be required to respond to a submitted individual environmental assessment within a time period of 4 months. If a review agency**

does not make its comments available to the Ministry of the Environment within 2 months then it should be assumed that they have no objection to the proposed work.

There is some question as to how meaningful public input can be on an environmental assessment document when the Province has already stated its position in the review document. It is evident to the public that the Ministry staff are prepared to take a position on a proposed project, based on the comments and any suggested amendments or conditions in the review document. The Ministry places a disclaimer in the front of the review document stating that the review does not constitute approval, or the Minister's official position. However, the review is the main source of information for the Minister's decision.

Recommendation 5

5. **In the environmental assessment process, the public is given only 30 days to respond to the final individual environmental assessment document. The proponent may have taken months or years to prepare the document, often with the help of specialists or consultants and the Ministry of the Environment and other review agencies may have taken months or years to prepare their written review. In order to provide additional time for the public to analyze the environmental assessment document, hire any specialists or consultants it may require, document its concerns and respond to the Minister the following procedure is proposed:**

When the proponent submits an environmental assessment document to the Minister, it should be made available to the public at the same time through the usual public information procedures. The public should be given two months to submit its comments to the Ministry of the Environment, and a copy of its comments should be sent to the proponent. The Ministry of the Environment should co-ordinate the comments from the review agencies, the public and any additional comments from the proponent, and issue its review document, based only on the concerns raised, within a four month period. The Ministry of the

Environment review should be a final staff position for recommendation to the Minister. This document should then only require the current 30 day public review period.

Once the environmental assessment document is filed with the Minister, the proponent municipality has little or no further input until the review document is made public. At that time, the municipality may comment on the review and provide further documentation to present its case. Many issues could be resolved, before they are written in the review, if the proponent could see and comment on the draft review document. While recognizing that the Ministry of the Environment may wish to remain independent and not appear to be in collusion with the proponent, the review document could identify areas where dialogue had produced a reasonable solution to a concern.

Recommendation 6

6. **The staff at the regional office level of the Ministry of the Environment is aware of local issues and concerns. Therefore, regional office staff should review the environmental study reports prepared for municipal projects that fall into the class environmental assessment category. Projects that require an individual environmental asssessment should be reviewed by the Ministry head office staff. As stated in recommendation 2, the regional office staff should be involved in the process and, where necessary, may be called upon to assist the proponent.**

Some of the review agencies have considerable input into the review process, and amendments or conditions of approval are often based on the opinion of one person in that particular review agency. Many conditions imposed by the Minister, when approving an assessment, can be onerous in terms of preparation time and cost. A cost/benefit analysis of these conditions could prove that they do not always justify the time, effort and expense necessary for implementation. The Scarborough Storm Water Management Assessment is a case in point. A condition of approval required extensive monitoring to take place on the watercourse before, during and after the major diversion construction project. The person in the Ministry of the Environment technical branch who required the testing is no longer employed by the Ministry and no one else can ascertain what the monitoring is to accomplish or how it is to be carried

Recommendation 7

7. **The proponent should be provided with an opportunity to respond to a draft order outlining any conditions of approval, without jeopardizing project approval or limiting the ability of the proponent to accept the draft order and proceed with the project without delay.**

It is clear that the Ministry of Citizenship and Culture has imposed so many studies on Ministry of Transportation and Communications' projects that the MTC now carries out archeological studies and salvages, as well as special historical studies, as a matter of routine. Since the determination of the existence of artifacts or items of historical significance is of provincial (or national) benefit, the costs should be borne by the Ministry of Citizenship and Culture.

Recommendation 8

8. **Any condition of approval that requires the proponent to survey, study and/or document items that are not directly related to the project, but are required, as a condition of approval, to increase the data base of a particular Ministry, should be paid for by that Ministry.**

The Minister of the Environment is in the unenviable position of having to wear two hats, the "green hat" of the technical review and the "white hat" of neutral coordinator of the formal government review. There is a general feeling from the public, that the Minister is not impartial when he sets the standards and guidelines upon which many of the judgements are made. When the proponent asks the ministry staff for advice in preparing an assessment document, there is the inherent conflict of asking the reveiwer what is required. It is similar to asking an examiner what answers he wants to see.

The delays, and the costs associated with the delays, during the review period are expected to increase when all 838 municipalities start working with the Act after the class documents are approved. The Ministry of the Environment does not have enough trained staff to adequately handle the current work load

of individual environmental assessments, let alone the surge of work when all the municipalities start asking for advice and submitting environmental assessments. Results of a recent Ministry questionnaire to the municipalities indicate the volume of work will be overwhelming for the Branch. The Association is of the understanding that the regional offices of the Ministry of the Environment will be handling the bulk of the enquiries and work related to the class assessments. While recognizing that the regional staff of the Ministry has had limited experience with the Act, the Association would support this as a move in the right direction. Regional staff has a better understanding of local issues and concerns, as well as being more aware of potential impacts on the local environment.

Recommendation 9

9. The Government review of an environmental assessment document should be carried out by people at least as knowledgeable as those who prepared the assessment. Preferably the review team should be interministerial and should be empowered and provided with the necessary funding to retain outside consultants for the review process, when such expertise is not available in the Ontario public service.

4.3 Hearings

Many municipalities have appeared at hearings before the Environmental Assessment Board (EAB), either under the Environmental Assessment Act or the Environmental Protection Act, or even the Consolidated Hearings Act. There are similarities with the types of hearing, and some of the concerns expressed will apply to one or all types of hearing.

The high costs associated with hearings on municipal projects have prompted many municipalities to question the entire environmental assessment process.

Based on the municipal experience at hearings, the technical branches of the Ministry of the Environment do not take the positive role of co-proponency, but prefer to take an independent position or one of "cautious support". The proponent, who has met or bettered the

Ministry of the Environment technical standards or guidelines, ends up attempting to justify these guidelines to a skeptical public.

If the Ministry of the Environment, through the public hearing process, was to establish firm standards, then the Hearing Board could stipulate that these were not arguable during a specific project hearing. This would reduce the hearing complexity and let the Board concentrate on the "concept" in much the same way as a zoning by-law amendment hearing is conducted. In this latter case, the technical details are left for the later site plan review, under Section 40 of the Planning Act, 1983.

The Joint Board hearing for the Victoria Hospital Energy from Waste Plant lasted 4 months and included 50 days of hearings. The cost to the taxpayers, both directly and indirectly, was $700,000 for the hearing alone. The proponent felt that if the Ministry of the Environment had screened out many of the technical objections before the hearing, and the Board had dismissed frivolous objections and objections that had been previously covered in the hearing, then the 50 day hearing could have been reduced by about 50%.

The groups in opposition to the plant had no regard for the technical evidence submitted, and insisted that there should be 100% guarantees against any emission, even those that now cannot be measured! It is becoming evident that in several instances the public is not questioning the need for a project or its conceptual design, but rather the Ministry of the Environment standards or guidelines upon which the proponent has based his assessment.

The hearing in Scarborough by the Environmental Assessment Board, concerning the Manville Canada site rehabilitation under the Environmental Protection Act, was adjourned in order that the proponent, Manville, and the opponents, two community associations, could exchange witness statements and interrogatories. As a result of these exchanges, a joint submission was made to the Board in February, 1984. The joint submission was an acknowledgement that the opponents did not oppose the "concept", only the method of achieving it.

Ideally, any hearing board should deal first with the "concept" and, if approved, the Ministry of the Environment local office should ensure that its standards are accommodated by the final design.

They should also accept public input in the event that for any reason the standards should be altered because of special circumstances, or there is a need for mitigating measures.

The City of Thunder Bay was required to hold a hearing on its municipal auditorium, which lasted two weeks and involved six days of hearings. The hearing was called because five residents wrote letters to the Ministry of the Environment requesting a hearing without detailing or listing any concerns. The City prepared witness statements before the preliminary hearing. The opponent group did not have any witness statements ready and this delayed the start of the hearing. The concern of the only opponent at the hearing was the potential impact of the old landfill site on the proposed facility, rather than the impact of the auditorium on the public.

The chairman of the Environmental Assessment Board, Mr. Barry E. Smith, has commented that hearings will not be held if requests are frivolous or vexatious. It remains to be seen if this can be effectively implemented.

Recommendation 10

10. **The Ministry of the Environment should immediately set out and establish air and water quality and noise pollution standards through a public hearing process, such as is provided in the Environmental Assessment Act, to eliminate future proponents having to justify these standards at a project level.**

Objectors requesting a hearing should be required to include in their written submissions details of their objections. In this way many of the objections could be resolved prior to the hearing. The Ministry of the Environment, under the Act, should be required to fill a more positive role and should be required to establish standards on technical matters. These standards should be accepted by the Board.

The Board's terms of reference should clearly define the limits of the Board's authority, rules of procedure, including appeals, and limit the technical decisions the Board can make.

The hearing before the Environmental Assessment Board in 1980, regarding the Metropolitan Toronto and Region Conservation Authority's proposed Colonel Samuel Smith Waterfront Master Plan, lasted 33 days. While this was the first hearing of its kind in the Province, the following reasons were given by the Authority as contributing to the long length of the hearing:

a) The Ministry of the Environment review document stated that the proposed Master Plan should be refused approval to proceed. There were no specific grounds for the proposed refusal. Had specific grounds for the recommendation of refusal been included, then the evidence at the hearing could have been specific to those grounds and would have resulted in a much shorter hearing;

b) The Minister of the Environment referred the entire master plan to the Environmental Assessment Board, as opposed to directing the Board to deliberate on specific issues or to hold a pre-hearing meeting to isolate the main issues to be debated;

c) In its effort to conduct a full and complete hearing, the Board permitted the following:

   i) Once the hearing commenced it became obvious that new evidence and new issues, not previously contained in the Authority's master plan or the government review document, were admissible. This created a substantial workload for Authority staff for data preparation during the hearing;

   ii) The Board was not prepared to limit the cross-examination by the general public. At times this resulted in unrelated or repetitive questioning;

   iii) The Board was prepared to hear anybody in the audience who wished to ask questions, even though such persons were not specifically identified as a party to the hearing.

Recommendation 11

11. In order to increase the effectiveness and efficiency of an environmental assessment hearing, the Minister should forward only unresolved issues to the Board. Notwith-

standing recommendation 2, the Environmental Assessment Act should be amended to permit the Board, where appropriate, to hold a prehearing to isolate the main issues. Issues and/or evidence not identified in the review process should not be subsequently raised during the hearings without advance notice to the proponent and a specific ruling by the Board.

The Ministry of the Environment should not present a neutral position before the Board unless its sole purpose is to tender evidence in chief.

The power of hearing boards to award costs is based on statute. Under the Consolidated Hearings Act, the Consolidated Hearing Board can apportion costs for expenses incurred.

The Environmental Assessment Act and the Environmental Protection Act, along with their regulations, do not make any reference to costs at hearings. Further, the Minister and/or Director of the Ministry of the Environment do not have the authority to direct a proponent to pay another party costs as a condition of approval.

The Environmental Assessment Board has authority to appoint experts under Subsection 18(9) of the Environmental Assessment Act. While the Environmental Assessment Board is an independent body and not directed by the Minister, the Ministry is prepared to pay the costs of engaging these experts. This authority under Section 18(9) is not broad enough to be applied retroactively to the hiring of consultants engaged by a party to the hearing. Therefore, the Board cannot pay the costs of experts called by any party to the hearing.

In the case of the Manville Canada hearing in Scarborough, the Environmental Assessment Board ruled that "the community ratepayer associations are in need of financial assistance and did act in a responsible way in engaging experts to review the proposal". It is believed to be only the second time the Board has agreed to pay expert witnesses, engaged by a party to the hearing, in hearings under the Environmental Protection Act.

4.4 Appeal Procedures

When a hearing board hands down a decision, there are usually opportunties for appeal.

The "anguish of Oxford County"[1] highlights the time, expense and frustrations that can take place during and after a hearing. After a 59 day hearing, the Joint Board turned down the project. Cabinet reversed the Board's decision. The opponent, the Township of South-West Oxford, filed a writ in the Supreme Court of Canada seeking to make Cabinet's decision null and void.

In the London Hospital hearing, the Consolidated Hearings Board awarded costs of $60,000 to the public groups. This was an award against Victoria Hospital. The Board decision was not appealed. It is interesting to note that, if an appeal is made and the original ruling is upheld, then the party may lose its awarded costs.

5. COSTS ASSOCIATED WITH THE ENVIRONMENTAL ASSESSMENT PROCESS

Most, if not all, of the problems identified in Section 4 have direct or indirect impact on the costs associated with the environmental assessment process, from the identification of need through to approval to construct the project.

The Environmental Assessment Branch of the Ministry of the Environment has indicated that the environmental assessment process costs should average between 1/2% and 1% of total project costs. Their definition of environmental assessment process costs is any work, documentation or public communication that would not otherwise be undertaken as part of the project planning and pre-design process.

5.1 The Class Assessment

Municipalities have not prepared any "environmental study reports" for projects covered by class environmental assessments and, therefore, we have only the experience of the Provincial Ministries and Ontario Hydro on which to rely. The Ministry of Transportation and Communications has prepared over 200 environmental study reports and for their class projects the environmental assessment documenta-

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1 See Editorial in Municipal World, September 1983

tion costs have ranged from $2,000 to $10,000. Ontario Hydro class projects tend to cover expensive projects, such as minor transmission lines up to $4 million and transformer stations up to $10 million. Consequently, their costs for the environmental assessment process fall in the range of $5,000 to $150,000. (These costs were derived from Ontario Hydro's estimate of 150 to 4,000 manhours.)

5.2 The Individual Assessment

During the course of the study, the MEA Committee met with representatives from:

- Association of Conservation Authorities of Ontario
- Ontario Hydro
- Ministry of Transportation and Communications
- Ministry of the Environment.

Representatives from the Ministries of Municipal Affairs and Housing and Treasury and Economics cancelled their attendance at a scheduled meeting at the last minute. The purpose of these meetings was to determine the Provincial Government's experience and their costs associated with the Environmental Assessment Act.

Due to the large number of projects that they deal with annually, Ontario Hydro, the Ministry of Transportation and Communications and the Ministry of the Environment all have full-time staff devoted to the environmental assessment process. The fact that these agencies have in-house specialized staff, and have developed cost effective methods for the preparation of documents based on several years of experience working with the Act enables them to keep their costs approximately in accord with the following table:

Typical Costs Associated with Individual Assessments

Project Cost	EA Process Cost	
	(a) as % of Project Cost (See Figure 1)	(b) in $'s (See Figure 2)
under $1 m	in range 7% to 3%	$30,000 to $70,000
under $5 m	in range 5% to 2%	up to $250,000
under $20 m	in range 2% to 1%	up to $400,000
over $20 m	up to 1.0%	up to $425,000

It appears that to comply with the necessary requirements of the environmental assessment process, there is a minimum cost of approximately $30,000 on any typical Ministry or municipal project that falls into the individual environmental assessment category. Most of this minimum cost is a result of the public participation process.

When we consider that municipalities do not have the same environmental assessment specialists and streamlined public participation process, then it can be expected that the environmental assessment process costs for municipalities will be higher than those shown in the table above.

Direct municipal experience with the individual environmental assessment process has been, and will continue to be, very limited to the point that few, if any, municipalities could justify full-time staff. The end result, so far, has been a much increased cost to undertake the same process.

Figures 1, 2 and 3, which follow Table 1, have been prepared from known costs of projects that have been the subject of individual environmental assessments. The graphs are intended to show the probable range of environmental assessment process costs expressed both as actual costs and as a percentage of project cost.

Table 1

Costs were obtained from the following municipalities, authorities and agencies for the plots shown on Figures 1, 2 and 3:

Ministry of Transportation and Communications
Ministry of the Environment
Ontario Hydro

Conservation Authorities of:	Metropolitan Toronto and Region
	Upper Thames River
	Grand River
	Sault Ste. Marie Region
Regional Municipalities of:	Metropolitan Toronto
	Niagara
Cities of:	London
	Scarborough
County of:	Victoria

Figure 1 shows the probable envelope within which the percentage cost of the environmental assessment process will fall. There appears to be a minimum cost of $30,000 which represents 3% on a $1 million project.

Figure 2 shows the actual costs of various environmental assessment projects. The curve of the probable maximum cost line represents the upper line of the envelope from Figure 1.

Figure 3 shows numerous plots of assorted municipal projects that were all designed by consultants. A mean design cost line was shown and upon this the upper line of the envelope from Figure 1 has been added. This shows the possible increase in design cost due to the environmental assessment process.

EA PROCESS COSTS, AS % OF PROJECT COST, ASSOCIATED WITH INDIVIDUAL ASSESSMENTS

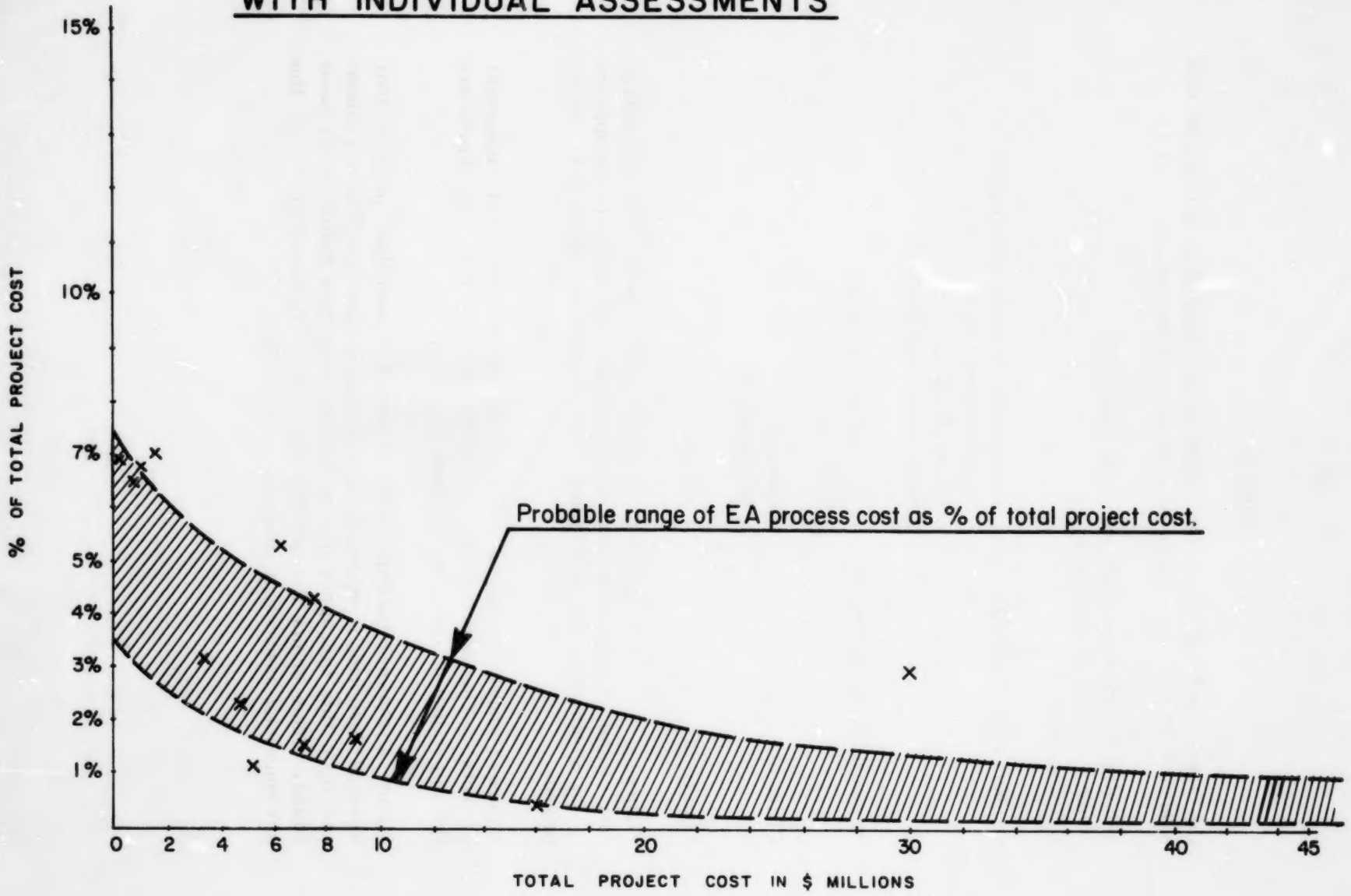

FIGURE 1.

EA PROCESS COSTS ASSOCIATED WITH INDIVIDUAL ASSESSMENTS

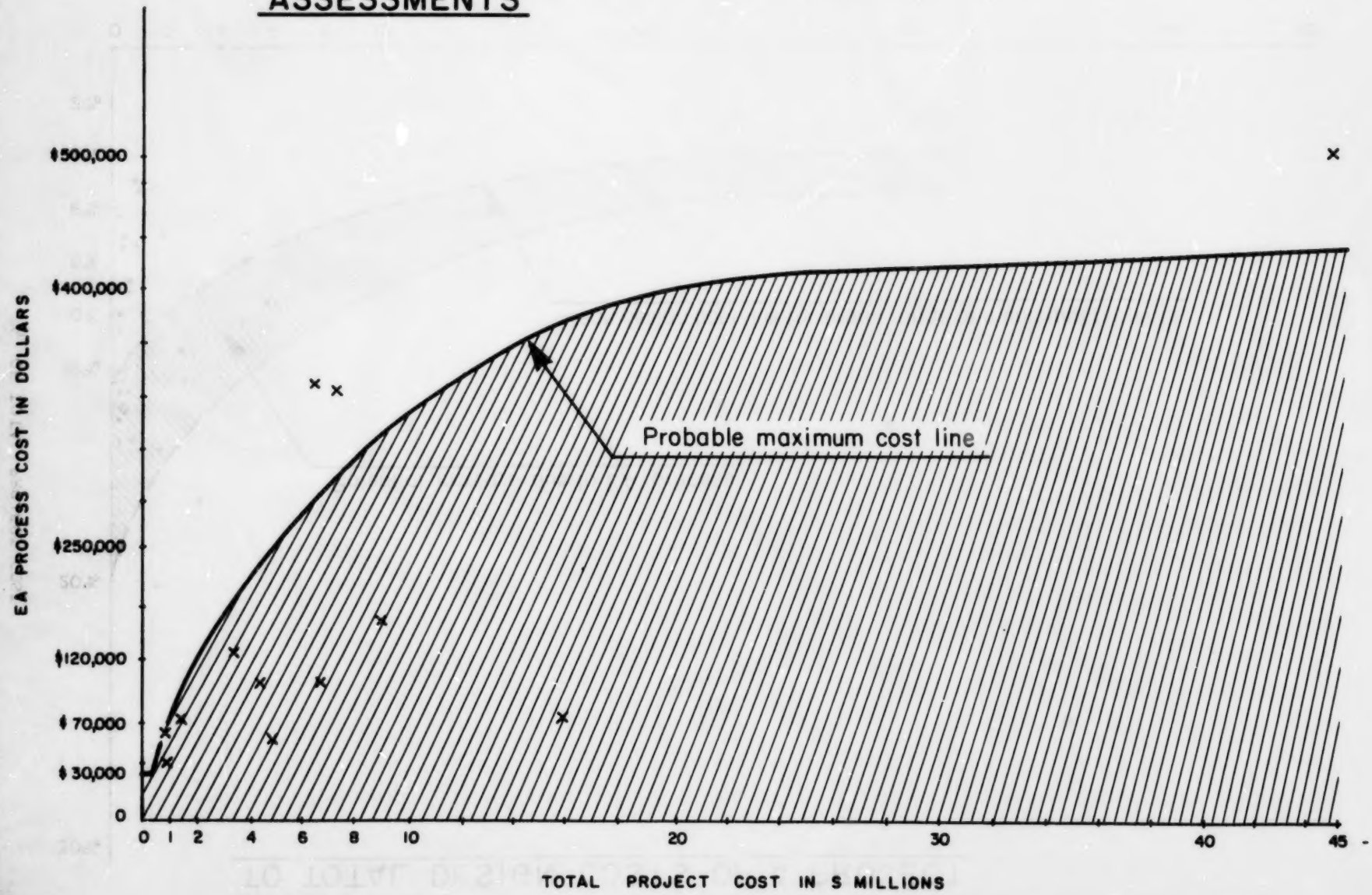

FIGURE 2.

INDIVIDUAL EA PROCESS COSTS AS POTENTIAL INCREASE TO TOTAL DESIGN COSTS OF A PROJECT

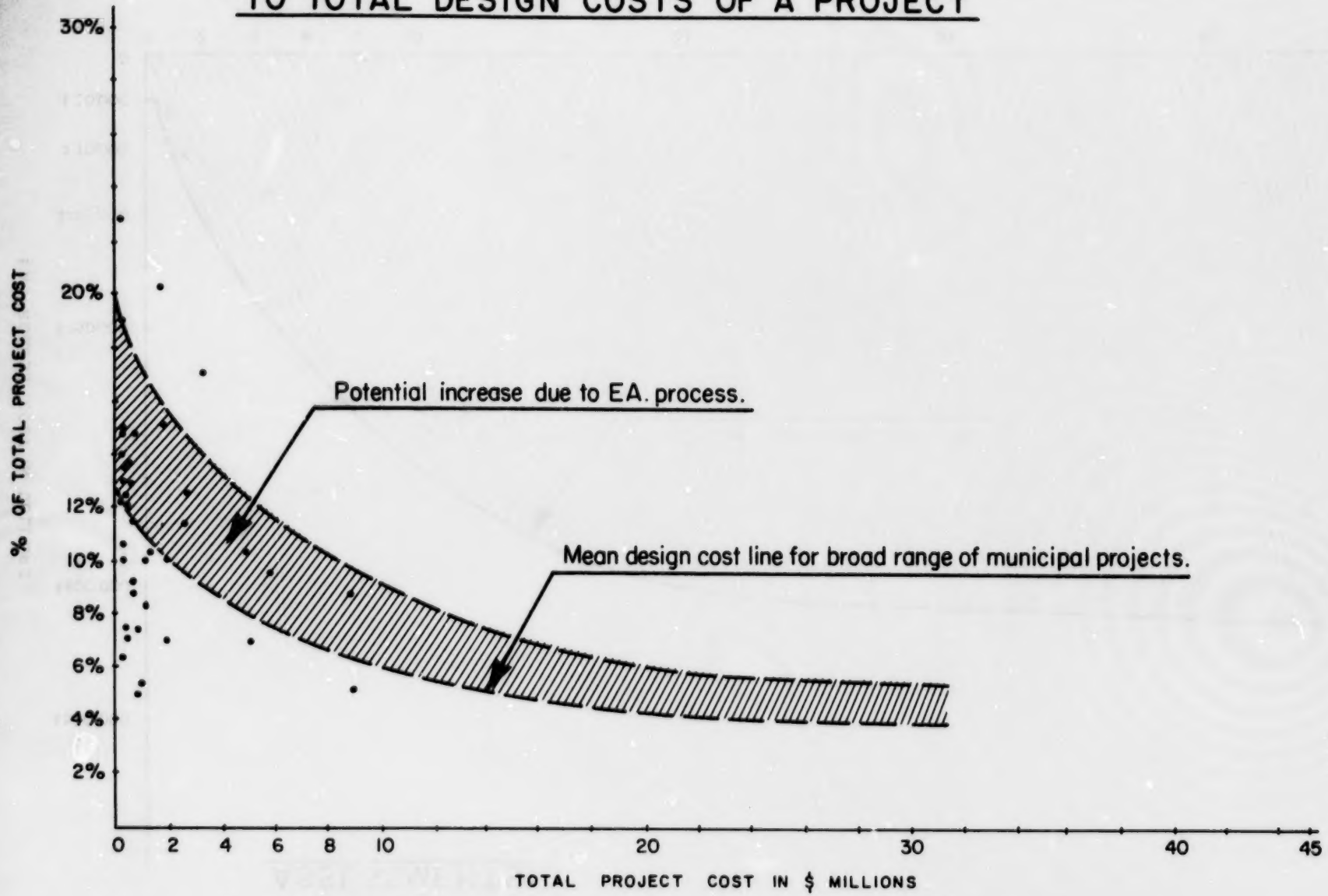

FIGURE 3

There are other direct costs associated with the environmental assessment process which fall into the categories of special studies, salvages or analyses. Some typical costs incurred by proponents are as follows:

historical study	*	$500
archeological study	*	$700
archeological salvage	*	$12,000
wetland vegetation study		$30,000
water quality analysis		$85,000

* Average of many different projects

These are all direct costs that can be readily quantified. There are several indirect costs, however, which are difficult to quantify but should be included to complete the cost analysis. The time taken to follow the environmental assessment process, plus the lengthy time for review by the Ministry of the Environment, causes the following, among other things, to occur:

a) increased construction costs due to inflation
b) additional costs incurred because project is not available
c) lost revenue, due to delay in opening a facility
d) increased land costs
e) increased health hazards because project is not available
f) overdesign to avoid criticism
g) abhorrence of the Act encourages band-aid solutions to be implemented, rather than submit to the environmental assessment process.

a) increased construction costs due to inflation

The Metro Toronto conversion of its Ingram Transfer Station from an open to an enclosed facility, has been delayed two years and the estimated inflation on the contract is $750,000.

The City of Port Colborne water purification plant was delayed two years because of the environmental assessment process and the low tender was $2 million more than the original estimate. Based on the Southam composite building index, the two year inflation was a minimum of $400,000.

Hence delays, caused by long review periods and the environmental assessment process, increase the final cost of the project.

b) additional costs incurred because project is not available

An example of this type of indirect cost is the Region of Halton's landfill site problems. Since a new facility is not available, the Region considered sending its waste to New York State, which would have cost Halton an additional $10 million over 3 years. At the same time, New York State would have been producing energy from Halton's waste in an energy from waste plant.

c) lost revenue due to delay in opening a facility

If it can be demonstrated that a certain facility is necessary and environmentally sound, then delays in approving the project will cause the municipality to lose potential revenue or savings over existing methods of operation. An example of this is the energy from waste plant at Victoria Hospital, Westminster Campus, London. The local municipality will deliver garbage and sewage sludge cake daily to the plant and save money in garbage handling and replacing obsolete sludge incinerators.

d) increased land costs

When a project follows the environmental assessment process for individual or class environmental assessments, the municipality cannot purchase land until the appropriate stage in the process is reached in accordance with the regulations. The value of any land to be purchased will inflate. The degree of inflation will be proportional to the time taken to complete the environmental assessment process thereby allowing the municipality to finalize negotiations or start expropriation proceedings.

e) increased health hazards because project is not available

It is very difficult to estimate costs in this area. However, an extreme example would be the closing of swimming beaches because of local pollution problems that cannot be rectified due to delays in obtaining approval to proceed with the necessary rehabilitation activities.

An actual example is Metro Toronto's Ingram Transfer Station which is to be converted from an open air facility to an enclosed facility. It has been delayed two years and any benefits, that will be received from the enclosure, have been lost for this period of time.

f) overdesign to avoid criticism

There will be a tendancy to overstudy and overdesign a new facility to avoid criticism from the review agencies and public. In addition, the proponent may offer to compromise the design to obtain concurrence from an opponent or to avoid a hearing.

In the lengthy Oxford County hearing, the County was offering to carry out special studies in order to reduce the length of the hearing and attempt to get concurrence with the proposal.

g) abhorrence of the Act encourages band-aid solutions

Many municipal councils are concerned with the high costs of the environmental assessment process, including hearings, and will avoid potential high impact projects if they require an individual assessment. This means problems will be allowed to persist with only "exempt project status" solutions being implemented i.e., band-aid solutions.

Meanwhile, the main problem would remain unchanged and the cost of rectification would escalate.

5.3 The Hearing by the Environmental Assessment Board

When a project is subjected to a hearing under the Environmental Assessment Act, there are considerable costs involved. The actual hearing procedures, including legal fees, have ranged from $50,000 to $600,000. Conditions of approval, such as special studies and monitoring procedures, can add costs. Costs of hearings can vary considerably and some examples, which include studies necessary for the hearings, are as follows:

A Ministry of Transportation and Communications project, Highway 89, had actual hearing costs of $40,000 plus legal fees. The environmental assessment component of the pre-design study cost $62,000. However, as a result of conditions imposed by the hearing board, special studies subsequently carried out cost an additional $200,000.

The Association believes that public money would be more wisely spent by planning and constructing something positive, rather than spending excessive amounts of money on studies and hearings.

The Halton Region landfill site case study exemplifies the money spent on studies and hearings rather than in constructing the necessary waste disposal facilities:

Process	Cost
- planning for new site 1974-1980 plus preparation for hearing under EP Act	$1,300,000
- obtaining approval to increase capacity of an existing landfill site	$ 500,000
- following requirements of EA Act to obtain approval to proposed site 1982-1984	$1,000,000*

* estimated cost to completion of EA process

The Oxford County costs for studies and hearings are not far behind those experienced by Halton Region.

The Metropolitan Toronto and Region Conservation Authority currently estimates that a hearing for its environmental assessment on the Keating Channel could cost between $400,000 and $600,000. This figure would include only lawyers, consultants and staff time directly associated with the hearing.

6. BENEFITS OF THE ENVIRONMENTAL ASSESSMENT PROCESS

The Association of Municipalities of Ontario supports the application of an environmental assessment process to those municipal undertakings which could adversely affect the environment. However, this support is given on the basis that the procedures to be followed under an environmental assessment application do not lead to the creation of excessive delays in carrying out municipal projects, nor an undue increase in administrative and/or construction costs which would be borne by the municipal taxpayer.

The environmental assessment process forces the proponent to provide careful consideration during the planning process and then to document that thinking and analysis procedure. Sometimes there may be better alternatives or even a decision to drop the project. The Glengowan and West Montrose dam proposals were eliminated after spending nearly $500,000 on studies for each. One major merit of the Glengowan Dam assessment is that the public has been educated as to the complexity of water management issues in the Thames River Basin.

The participation process may allow the public, the proponent and the review agencies to arrive at reasonable solutions to problems, before the formal document is submitted for review.

The Environmental Assessment Act provides a forum for approving controversial projects outside of the municipal council chamber. Once a municipal proponent has submitted an individual environmental assessment, the decision to proceed lies with the Minister of the Environment who may not be as susceptible to public pressure as the local municipal politician.

The trend to increased public participation has led to increased consideration of the social impacts of proposals. It is difficult to define parameters for social impact assessment. Increased use of the Environmental Assessment Act will evolve possible analytical frameworks that will become widely accepted.

There is becoming more of a strong interaction between land use planning and environmental assessment. The concept is emerging that project orientated environmental assessments should not be the leading force in planning.

The Consolidated Hearings Act appears to be eliminating the need for multiple hearings on the same project.

7. SUMMARY OF RECOMMENDATIONS

1. In order to keep the municipalities informed of new regulations, general information, proposed seminars and a listing of environmental assessments that have been submitted, an information document, such as "Environmental Assessment Update", should be issued quarterly by the Ministry of the Environment. Proponents should be encouraged to submit articles and letters, regarding the Environmental Assessment Act, for publication.

2. When the Minister of the Environment considers requests for "bump-ups" from any objectors, the Minister should ensure that frivolous objections are not permitted. Any request for a "bump-up" should be accompanied by documentation outlining the reasons for the bump-up request. The Regional Office of the Ministry of the Environment should be asked to comment on the validity of the "bump-up" request taking into account the local concerns and issues.

   The Minister should have authority similar to that granted the Ontario Municipal Board under Section 63(5) of the Ontario Municipal Board Act, Chapter 317, R.S.O. 1980, permitting the Minister, after having carefully considered all objections received, to deem that the objections to an undertaking were not sufficient to require a hearing.

   If the project proceeds to a hearing, then issues which are not raised in the review process should not be raised during the hearings without advance notice to the proponent and the subsequent concurrence of the hearing body. Where the proponent considers it advisable the Regional office staff of the Ministry should be requested to assist the hearing by taking an active role.

3. If it is determined that there is little or no concern with a proposed project after the first public meeting, a mechanism should be available to cut short the process. Ideally, the municipal council should be able to pass a by-law indicating that they would be dispensing with the requirements of an individual assessment and producing an

environmental impact statement that would be sent to the Minister of the Environment in support of the by-law. This would be a similar process to claiming exemption for a project.

4. The Minister of the Environment should be required to respond to a submitted individual environmental assessment within a period of four months. If a review agency does not make its comments available to the Ministry of the Environment within 2 months then it should be assumed that they have no objection to the proposed work.

5. In the environmental assessment process, the public is given only 30 days to respond to the final individual environmental assessment document. The proponent may have taken months or years to prepare the document, often with the help of specialists or consultants and the Ministry of the Environment and other review agencies may have taken months or years to prepare their written review. In order to provide additional time for the public to analyze the environmental assessment document, hire any specialists or consultants it may require, document its concerns and respond to the Minister the following procedure is proposed:

When the proponent submits an environmental assessment document to the Minister, it should be made available to the public at the same time through the usual public information procedures. The public should be given two months to submit its comments to the Ministry of the Environment, and a copy of their comments should be sent to the proponent. The Ministry of the Environment should co-ordinate the comments from the review agencies, the public and any additional comments from the proponent, and issue its review document, based only on the concerns raised, within a four month period. The Ministry of the Environment review should be a final staff position for recommendation to the Minister. This document should then only require the current 30 day public review period.

6. The staff at the regional office level of the Ministry of the Environment is aware of local issues and concerns. Therefore, regional office staff should review the environmental study reports prepared for municipal projects that fall into the class environmental assessment category. Projects that require an individual environmental assessment should be reviewed by the Ministry head office staff. As stated in recommendation 2, the regional office staff should be involved in the process and, where necessary, may be called upon to assist the proponent.

7. The proponent should be provided with an opportunity to respond to a draft order outlining any conditions of approval, without jeopardizing project approval or limiting the ability of the proponent to accept the draft order and proceed with the project without delay.

8. Any condition of approval that requires the proponent to survey, study and/or document items that are not directly related to the project, but are required, as a condition of approval, to increase the data base of a particular Ministry, should be paid for by that Ministry.

9. The Government review of an environmental assessment document should be carried out by people at least as knowledgeable as those who prepared the assessment. Preferably the review team should be interministerial and should be empowered and provided with the necessary funding to retain outside consultants for the review process, when such expertise is not available in the Ontario public service.

10. The Ministry of the Environment should immediately set out and establish air and water quality and noise pollution standards through a public hearing process such as is provided in the Environmental Assessment Act to eliminate future proponents having to justify these standards at a project level.

Objectors requesting a hearing should be required to include in their written submissions details of their objections. In this way many of the objections could be

resolved prior to the hearing. The Ministry of the Environment, under the Act, should be required to fill a more positive role and should be required to establish standards on technical matters. These standards should be accepted by the Board.

The Board's terms of reference should clearly define the limits of the Board's authority, rules of procedure, including appeals, and limit the technical decisions the Board can make.

11. In order to increase the effectiveness and efficiency of an environmental assessment hearing, the Minister should forward only unresolved issues to the Board. Notwithstanding recommendation 2, the Environmental Assessment Act should be amended to permit the Board, where appropriate, to hold a pre-hearing to isolate the main issues. Issues and/or evidence not identified in the review process should not be subsequently raised during the hearings without advance notice to the proponent and a specific ruling by the Board.

The Ministry of the Environment should not present a neutral position before the Board unless its sole purpose is to tender evidence in chief.

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